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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 **PAUMA BAND OF LUISENO**  
12 **MISSION INDIANS OF THE**  
13 **PAUMA & YUIMA RESERVATION,**  
14 a/k/a PAUMA LUISENO BAND OF  
MISSION INDIANS, a/k/a PAUMA  
BAND OF MISSION INDIANS, a  
federally recognized Indian Tribe,

15 Plaintiff,

16 vs.

17 **STATE OF CALIFORNIA;**  
18 **CALIFORNIA GAMBLING**  
19 **CONTROL COMMISSION,** an  
agency of the State of California; and  
20 **ARNOLD SCHWARZENEGGER,** as  
Governor of the State of California;

21 Defendants.  
22

CASE NO. 09cv1955 CAB (MDD)

ORDER ON JOINT MOTION  
FOR CLARIFICATION OF THE  
SCOPE OF DISCOVERY

[DOC. NO. 186]

23 Before the Court is the joint motion of the parties for clarification of the scope  
24 of discovery authorized by the Honorable Cathy A. Bencivengo, United States District  
25 Judge, on May 18, 2012. (*See* Doc. No. 182). During the hearing on May 18, 2012,  
26 Judge Bencivengo authorized the parties to engage in limited discovery for a period of  
27 sixty (60) days. (*Id.* at 40). The nature of discovery was limited to written discovery  
28 and no more than three (3) depositions. (*Id.* at 45). The scope of authorized discovery

1 also was limited. It is the scope of that limitation that is before this Court.

2       The Court has reviewed the motion papers and the transcript of the hearing  
3 before Judge Bencivengo. A critical issue to be addressed by the District Court is  
4 when the statute of limitations began to run in connection with some or all of the  
5 claims asserted by Plaintiff. (*Id.* at 28). Resolving that issue, in turn, depends in  
6 large part on the nature of the relationship between Plaintiff and Defendant created  
7 by the 1999 Compact. If, as Plaintiff claims, the 1999 Compact created a relationship  
8 whereby Defendants owed a fiduciary duty to Plaintiff, the statute of limitations for  
9 certain claims would not commence until Plaintiff had actual notice of facts sufficient  
10 to trigger the associated causes of action. If, as Defendants claim, there either was no  
11 fiduciary relationship created or it was a very limited fiduciary responsibility, then  
12 the statute of limitations for certain claims may have commenced when Plaintiff  
13 should have known sufficient facts to trigger the associated causes of action. (*Id.*).

14       The Court cannot view Judge Bencivengo's Order in a vacuum. Any discovery  
15 order must be viewed in relation to the claims and defenses of the parties. Here, the  
16 dispute centers on Defendants' alleged mishandling of its responsibilities in  
17 determining the availability and distribution of gaming licenses under the 1999  
18 Compact. The Court interprets Judge Bencivengo's Order as allowing limited  
19 discovery into when Plaintiff's causes of action under the 1999 Compact accrued for  
20 statute of limitations purposes. That issue, of necessity, as discussed above, requires  
21 discovery into whether or not the 1999 Compact created a fiduciary relationship  
22 between the parties and the scope of that relationship. The Court does not interpret  
23 Judge Bencivengo's Order as authorizing discovery into whether or not a fiduciary  
24 duty was breached and, if so, damages attendant to that breach.

25       The scope of authorized discovery at this time is as follows:


- 26       1.     Discovery may be obtained, during this period, to facts relating to  
27               whether or not the provisions of the 1999 Compact created a fiduciary  
28

1 relationship between the parties relating to the availability and  
2 distribution of licenses and, if so, the scope of that fiduciary relationship;  
3 and,

- 4 2. Discovery may be had, during this period, into facts learned by Plaintiff  
5 that bear on when Plaintiff actually knew or should have known of facts  
6 relating to the improper calculation and distribution of licenses under  
7 the 1999 Compact.

8 IT IS SO ORDERED:

9 DATED: June 12, 2012

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12 Hon. Mitchell D. Dembin  
13 U.S. Magistrate Judge  
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